IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1237 of 1999

in

SPECIAL CIVIL APPLICATIONNo 2171 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJKUMARI SHARMA W/O. VINOD M JOSHI
Versus
UNION OF INDIA

Appearance:
MR D R Dave for Appellant
MR JS YADAV for Respondent No. 1
Mr V M Pancholi, AGP for Respondent No. 2
MR BIPIN I MEHTA for Respondent No. 4, 5

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE D.P.BUCH

Date of decision: 18/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit. Service of notice of admission is waived by Mr V M Pancholi, learned AGP for respondent No.2 and Mr Bipin I Mehta, learned Advocate for respondents no.4 and 5.

Upon consensus, and in view of the nature of the disputes involved, this appeal is taken up for final hearing today itself.

2. The appellant has questioned the legality and validity of the order of the learned Single Judge passed, on 24.8.1999, in Special Civil Application No.2171/99. After having heard the learned Advocates for the parties, and considering the peculiar facts and virtually the admitted facts, and the observations made by the learned Single Judge in para 4 of the impugned order and subsequent affidavit filed, on behalf of respondents no.2 and 3, the impugned order of termination of service of the appellant dated 10/11.3.1999 passed by respondent no.4, is required to be quashed.

3. The impugned order of termination clearly states that the service of the appellant was not required w.e.f. 31.3.1999 as World Bank Project Scheme was closed in view of the letter dated 8.7.1998. Respondent no.4 has stated in the affidavit-in-reply that the said order came to be passed, in view of the stoppage of grant by the Government. It is further stated that respondents no.4 and 5 were not getting grant from either of the Governments, which promoted the respondent no.4 to pass the impugned order of termination of the appellant from services, who was appointed as a "Cataloguer" on 15.2.1991. The appointment was made, upon observations of due procedure of law, and she was continously serving in the office of respondent no.4, on a sanctioned post. Her services came to be extended from time to time, since 1991 until the impugned order of termination was passed. It is also very clear from the order of respondent no.4 dated 31.3.1997 that the appellant was confirmed on the said post, which was in relation to World Bank Assisted Project, after completion of the probation period satisfactorily, on 18.3.1992. It is, therefore, very clear that the facts are almost undisputed.

4. The impugned order of termination was passed by

respondent no.4, on account of non-receipt of order of the grant from the Government in time. Respondent no.4, therefore, terminated the services of the appellant, on the premises that the post was not continued and the grant was not available, which is not, as such, supported by the facts on record. On account of delay on the part of the respondent no.2, in communicating the order of extension and grant to the respondent no.4, the order of termination was passed. It is also not disputed that the post of Cataloguer was one of the 526 posts for the said project and except the appellant, all continued to work. No termination was, thus, passed except in case of the appellant, out of 526 posts. In view of the affidavit filed on behalf of respondents no.2 and 3 by the Director of Technical Education of the Government, it is amply clear that the Government has from time to time, extended the said scheme, though the World Bank Project has been closed and the Government is giving grant to the Educational Institutions for 526 temporary posts. The last Resolution, for the continuation of the aforesaid posts of the said scheme, is also published on 25.9.2000, a copy thereof is also placed on record. The said Resolution states that the aforesaid temporary posts have now been continued upto 30.11.2000, subject to the conditions mentioned in Resolution dated 25.9.2000. It is stated before us that the extension and allocation of grant is being ordered from time to time and the aforesaid Resolution is the last resolution for the continuance of the aforesaid 526 posts, which came to be created under the WBA project.

5. Unfortunately, no affidavit was filed on behalf of respondent no.2 before the learned Single Judge. As a result of which, the impugned order of the learned Single Judge came to be passed, after making observations in para 4 in this connection. Respondents no.4 and 5 before us had filed affidavit-in-reply in the writ petition before the learned Single Judge and as per their version, the Government has already stopped giving grant to them and as a result thereof, they had no alternative except, not to extend services of the appellant. Thus, the simple order of termination came to be passed by the respondent no.4 on account of want of order with regard to continuation and the allocation of funds. It is an admitted fact before us that except the post of the appellant (Cataloguer), all the posts under the said Project have been continued and have been financed from time to time. Thus, the learned Single Judge had no benefit of doubt of the affidavit and clear version of the respondents no.2 and 3, whereas, now the stand of the Government is made very clear that all the posts

including the post of the appellant, have been extended from time to time and even after 30.11.2000, it will be extended as stated in para 4 of the affidavit-in-reply of respondent no.3, which is on behalf of respondents no. 2 and 3. It is further clearly stated in the affidavit-in-reply that the Government will provide grant to the institutions according to rules and regulations and, therefore, this court is requested to pass appropriate order in this appeal.

6. In esse, this is an appeal without any controversy at this stage. The impugned order, in the facts and circumstances, and the subsequent affidavit, and clear version, on behalf of the respondents no.2 and 3, is required to be interfered with and the impugned order of termination of service is required to be quashed and set aside.

7. In the result, the impugned order of termination is hereby quashed and set aside. The impugned order of the learned Single Judge shall stand also quashed and set aside. The appellant-original petitioner shall stand, therefore, continued on the said post, and she will be entitled to backwages, since she was not at all responsible for the impugned order of termination. In fact, the respondents no.4 and 5 were also not responsible for passing the impugned order. Unfortunately, there appears to be some procedural delay on the part of the respondents no.2 and 3. Therefore, the cost of the petition as well as this appeal shall be borne by respondents no.2 and 3.

8. On behalf of the respondents no.4 and 5, the learned Advocate has stated at this stage that though the order of Government is passed in reality and actually the grant has yet not been received. Again there appears to be procedural delay. The order of the Government is clear and, therefore, the respondents no.2 and 3 shall see that the procedural delay is obviated and the grant is immediately received by the respondent no.4 for payment of backwages and the regular wages. In order to see that the petitioner is paid the amount due and payable, pursuant to this order, it is directed that the statement of the payable amount of salary will be submitted by the appellant-original petitioner to respondent no.4, who, upon verification shall transmit the same to the Government and respondent no.2-Government of Gujarat shall pay the said amount to respondent no.4 within a period of two months from the date of receipt of the statement from respondent no.4, and within a period of two weeks from the date of receipt of the statement

from the appellant. The appellant shall furnish the same to respondent no.2. In case of dificulty, liberty for seeking further order is reserved. Direct Service is permitted.

This appeal shall stand accordingly allowed.

18.12.2000 [J N Bhatt, J.]
msp.

[D P Buch, J.]